

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

DECISION AND ORDER

02-CR-218A

SHERWIN LONDON,

Defendant.

On September 27, 2004, this Court sentenced the defendant to 121 months of imprisonment and 5 years of supervised release following his conviction after trial for attempting to possess with the intent to distribute heroin, in violation of 21 U.S.C. §§ 841, 846.

The defendant appealed his conviction and sentence. On September 6, 2005, the United States Court of Appeals for the Second Circuit issued a summary order affirming the defendant's conviction, but remanding the matter for reconsideration of his sentence in light of United States v. Booker, 543 U.S. 220 (2005), and United States v. Crosby, 397 F.3d 103 (2d Cir. 2005).

On November 29, 2006, the defendant filed a motion for resentencing pursuant to Booker and Crosby. The government filed its reply on December 15, 2006 and on January 30, 2007, the defendant filed a supplemental letter in

support of his motion for resentencing. The matter was deemed submitted without oral argument.

The issue before the Court is “whether a materially different sentence would have been imposed” had the Booker standards been in effect at the time that the defendant was originally sentenced. See United States v. Williams, 399 F.3d 450, 460 (2d Cir. 2005). If the answer to this question is yes, then a resentencing of the defendant is appropriate. However, if the answer is no, then resentencing is not required. Crosby, 397 F.3d at 120; see also United States v. Ferrell, ____ F.3d ____, 2007 WL 1374756 (2d Cir. May 11, 2007) (“If the district court finds it would not have imposed a materially different sentence, that is the end of the matter.”).

After considering the currently applicable statutory requirements as explicated in Booker and Crosby, along with the written submissions of the parties, the Court denies the defendant’s motion for resentencing. Applying the factors set forth in 18 U.S.C. § 3553(a) to the facts and circumstances existing at the time of the original sentence, the Court finds that it would not have imposed a materially different sentence if the Booker regime had been effect at the time of the defendant’s original sentencing. Accordingly, the defendant’s motion for resentencing is denied.

SO ORDERED.

s/ Richard J. Arcara

HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: June 5 , 2007